

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED

SEP 16 2013

CLIFFORD J. PROUD
U.S. MAGISTRATE JUDGE
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

IN THE MATTER OF THE SEARCH OF)
A 53 foot, white semi-trailer (hereinafter)
"the Semi-Trailer"). The Semi-Trailer is)
pointing north/south and the doors are on)
the north side of the structure, located at the)
Southeast side of a farmhouse located at)
8404 Pin Oak Road, Edwardsville, Illinois)
62025)

CASE NUMBER

13-M-6045-CSP

FILED UNDER SEAL

**APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT**

I, Robert A. Warren, being duly sworn depose and say:

I am a Special Agent with the Internal Revenue Service/Criminal Investigations, and have
reason to believe that on the premises known as:

A 53 foot, white semi-trailer (hereinafter "the Semi-Trailer"). The Semi-Trailer is pointing
north/south and the doors are on the north side of the structure, located at the Southeast side of a
farmhouse located at 8404 Pin Oak Road, Edwardsville, Illinois 62025, more fully described in
"Attachment A"

in the Southern District of Illinois there is now concealed a certain person or property, namely:

SEE ATTACHED LIST, ENTITLED "ATTACHMENT B"

which constitutes evidence of the commission of a criminal offense, the fruits of crime, or things
otherwise criminally possessed, or which is designed or intended for use which is or has been used
as the means of committing the offenses of (a) knowingly and willfully attempted to evade and
defeat federal income taxes, in violation of Title 26, United States Code, 7201 (Attempted to
Evade or Defeat Tax); (b) knowingly and willfully attempted to evade the reporting of a foreign

bank account with an aggregate balance of over \$10,000 under his control, in violation of Title 31, United States Code, Section 5314.

The facts to support the issuance of a Search Warrant are as follows:

AFFIDAVIT

I, Robert A. Warren, being duly sworn, hereby depose and state:

I. Introduction

1. I am a Special Agent with the Internal Revenue Service, Criminal Investigation ("IRS-CI") and have served in this capacity since February of 1994. I received training in accounting and financial investigative techniques at the Federal Law Enforcement Training Center in Glynco, Georgia. From June of 1991 until February of 1994, I was a Revenue Agent with the Internal Revenue Service, Examination Division. I earned both a Bachelor of Science degree in Accounting and a Master of Business Administration degree from the University of Maryland at College Park. I am a certified public accountant licensed in the state of Maryland. My current duties and responsibilities include conducting and participating in criminal investigations of individuals and businesses for violations of Title 18, Title 26 and Title 31 of the United States Code. I have participated in numerous search warrants and in other investigations of criminal violations of the Internal Revenue Code and related offenses.

2. The information contained in this affidavit is based on my personal knowledge, information that I received from other law enforcement agents assisting in this investigation, and on what I have learned from the other sources specifically discussed herein. This affidavit does not purport to set forth all of my knowledge or investigation into this case.

II. PURPOSE

3. I make this affidavit in support of an application for a search warrant for the 53 foot, white semi-trailer bearing Illinois license plate number "301 958 ST" located in the southeast section of 8404 Pin Oak Road, Edwardsville, Illinois 62025 (hereinafter "the Semi-Trailer"). This address is a farm containing a residence, numerous out building, and farmland. This search warrant seeks only to search the Semi-Trailer. A more complete description of the Semi-Trailer is contained in **Attachment A**.

4. I am currently conducting an investigation on David Comey. Based upon my investigation, there is probable cause to believe that evidence and instrumentalities of multiple federal crimes, including violations of 26 U.S.C. § 7201 (tax evasion) and 31 U.S.C. §§ 5314 (knowingly and willfully attempting to evade reporting of a foreign bank account with an aggregate balance over \$10,000), will be found on the Subject Premises. A more complete description of the items to be seized is contained in **Attachment B**.

III. FACTS SUPPORTING PROBABLE CAUSE

5. The information in this section was obtained from interviews, IRS records, public court records, bank account statements, signature cards and other investigative techniques.

Background on DAVID COMEY

6. DAVID COMEY has falsely taken the position with the Internal Revenue Service that requiring him to file a personal tax return is contrary to his right against self-incrimination and thus violates the 5th Amendment of the United States Constitution. DAVID COMEY wrote an undated letter to the Waukesha County Probate Court in 2011 stating that he believed filing tax returns were a violation of his 5th Amendment right against self-incrimination. He further wrote

that he understood that the Supreme Court in the U.S. v. Sullivan decision rejected that argument. On or about November 9, 2010, DAVID COMEY also espoused this argument during a recorded prison call with his cousin, Frances Russell of Edwardsville, Illinois.

7. In 1966, DAVID COMEY's inherited an undivided 1/2 interest in a 135 acre farm in or near Edwardsville, Illinois from his maternal grandfather, Frank Bender of Edwardsville, Illinois ("the Bender Farm). However, Mr. Bender granted life estates to the Bender Farm to his wife Minnie Bender, his son Harvey Bender, and his daughter Cristeen Comey (DAVID COMEY's mother). DAVID COMEY inherited Minnie Bender's 1/2 remaining interest on her death in 1973. Madison County, Illinois tax records reflect Harvey Bender as the owner of the property, even though he never owned the property and died in 2008. The real owner of the property is DAVID COMEY.

8. DAVID COMEY has not filed a federal income tax return since he filed his 1992 Form 1040 in 1993.

9. During the 1990's DAVID COMEY accrued approximately eight misdemeanor convictions for failing to file Wisconsin tax returns and for filing false Wisconsin sales tax returns. The tax bill related to these convictions grew to approximately \$470,000 by 2012.

10. DAVID COMEY has never filed a Foreign Bank Account Report (FBAR), Form TD F 90.22.1. A United States person that has a financial interest in or signatory authority over foreign financial accounts must file an FBAR if the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during a calendar year. In the late 1980's DAVID COMEY assumed control of Swiss Bank Corp account [REDACTED], held in name of his company Landtrak Development, LTD.

11. On August 26, 1992, DAVID COMEY wire transferred \$599,965.00 into SBC

[REDACTED]

12. On October 10, 2001, DAVID COMEY lost a U.S. Tax Court case and was ordered by U.S. Tax Court Judge Renato Beghe to pay the IRS \$176,000 in tax, interest, and penalties. Judge Beghe ruled that Landtrak was a nominee for David COMEY and has no legitimate business purpose.

UBS AG (UBS) is a global financial service company based in Switzerland. UBS maintains assets in Switzerland for U.S. clients (and others). On March 28, 2001, DAVID COMEY opened UBS [REDACTED].¹ Records obtained by the IRS from UBS pursuant to a tax treaty show that the year end balances in this account from 2001 through 2008 fluctuated from a low of \$1,378,866.96 to a high of \$2,018,520.² DAVID COMEY was therefore required by law to file and FBAR annually and failed to do so.

13. On July 1, 2004, DAVID COMEY was sentenced to thirteen year's incarceration for second degree of sexual assault of a mentally ill person, followed by twelve years of supervised release and registration as a sex offender.³ Since that time, the Wisconsin Department of Correction has maintained custody of DAVID COMEY. He currently resides in Housing Unit 9 of Block 11 at the Columbia Correctional Institution, located at 2925 Columbia Pike, Portage, Wisconsin 53901.

14. Cristeen COMEY died in 2004. DAVID COMEY was her only heir.

¹ There are several sub accounts associated with this main account.

² UBS closed the account in 2009 and have refused to turn over any records showing the disposition of the funds remaining in the account at the time it was closed.

³ [REDACTED] was DAVID COMEY's victim. ■

15. In 2012, The Wisconsin Department of Revenue and the Internal Revenue Service levied and seized the assets of Cristeen Comey's estate to partially satisfy COMEY's delinquent tax obligations. However, the IRS still had to write off as uncollectible about \$174,258.13 in tax, interest, and penalties owed by DAVID COMEY stemming from his 1991 and 1992 tax years.

Evidence of Income

16. Records obtained from UBS pursuant to a tax treaty show that DAVID COMEY earned approximately \$437,000 in interest, dividends, and capital gains from 2001 through 2008. The tax due and owing on this unreported income is approximately \$54,000.⁴ DAVID COMEY is a United States citizen and therefore is required to report to the Internal Revenue Service income from all sources, both from within and outside the United States.

17. In 2009, DAVID COMEY sold for approximately \$30,000 a portion of the Bender Farm to the Madison County Government for an easement to make way for the widening of a county road. Because DAVID COMEY refused to provide a signed I.R.S. form W-9 disclosing his Social Security Number, the Madison County government never made payment to COMEY and never recorded the liability.

18. Since at least 2010 to the present, farmer Patrick Martin has farmed DAVID COMEY's land and sold the crops to a local grain elevator. DAVID COMEY's share of the proceeds is 33%. From 2010 through 2012, COMEY earned \$73,895.45 from the sale of the soybeans and corn grown on his property and farmed by Patrick Martin. The proceeds, less approximately \$3,400 paid to the Madison County for property taxes on DAVID COMEY's farm,

⁴ Your Affiant has no records for [REDACTED]. However, since SBC merged with UBS in 1998, Your Affiant believes this account was closed and the balance transferred to UBS [REDACTED].

are currently being held as an accounts payable in the name of the dead uncle by the grain elevator, M&M Service Company.

Evidence of Tax Evasion and FBAR Violations

19. When DAVID COMEY opened his UBS account in 2001, he signed a statement which read:

"I would like to avoid disclosure of my identity to the US Internal Revenue Service under the new tax regulations. To this end, I declare that I expressly agree that my account shall be frozen for all new investments in US securities as from 1 November 2000."

20. Sometime in 2001, DAVID COMEY told R.R., a close friend at the time, that he (COMEY) had over \$100,000 in a Swiss bank account and that he maintained the account so he would not have to pay taxes on it.

21. On or shortly before 2006, DAVID COMEY confided in [REDACTED] that, "...he (DAVID COMEY)...had an excess of \$900,000.00 in accounts outside the U.S. He informed me ([REDACTED]) that he transferred these funds when he got into some tax problems...with the IRS."

22. DAVID COMEY has not filed tax returns since 1992, despite earning income from [REDACTED] the sale of an easement on one acre of his farm in 2009 to the Madison County Highway Department, and the sale of crops grown on his farm to M&M Service Company from at least 2010 through 2012.

23. DAVID COMEY refused to provide his social security number to Frances Russell of Edwardsville, Illinois (Ms. Russell), the executor of the estate of Harvey Bender (the dead uncle).⁵ Russell needed DAVID COMEY's social security number in order to transfer the farm

⁵ Ms. Russell is DAVID COMEY's second cousin and DAVID COMEY calls her approximately once a month from jail.

into DAVID COMEY's name. DAVID COMEY would then be officially responsible for the property DAVID COMEY refuses to provide his social security number to Ms. Russell because he does not want the farm in his name.

24. DAVID COMEY has told Ms. Russell that he does not want the crop payments from the grain elevator issued to him because he does not want the income tied to his social security number. DAVID COMEY failed to provide his social security number to the Madison County Highway Department despite being provided with a blank Form W-9.

25. Beginning on or around November 25, 2012, and continuing until approximately May 2, 2013, DAVID COMEY made twelve calls to Ms. Russell. DAVID COMEY asked Ms. Russell to help incorporate a management company with a separate employer identification number to accept the payments from the grain elevator. DAVID COMEY told Ms. Russell that he does not want his name tied to the company, but he wanted to be able to take it over should the need arise.

26. DAVID COMEY failed to file any FBARS for the years 2001 through 2012.⁶

Evidence of Documents at Site to be Searched

27. On April 26, 2011, the auctioneer for the estate of Cristeen Comey filed an affidavit with the Waukesha County Circuit Court stating that the estate was in possession of the following personal property belong to DAVID COMEY:

"two mid-1960's Rolls Royce automobiles and two Mercedes Benz automobiles of the same vintage...one half of a standard size semi-trailer filled with miscellaneous personal effects including furniture, metal cabinets, personal papers, and car parts....furniture, car parts, tools, obsolete electronic equipment and related technical manuals and diagnostic equipment, computer components including keyboards, monitors, and *hard drives*, material related to litigation, *records and documents pertaining to David Comey's*

⁶ During an interview with Your Affiant last February, DAVID COMEY denied knowing about the FBAR filing requirements.

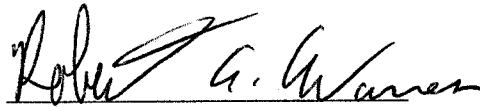
business ventures and other miscellaneous items.”,

28. On or about September 11, 2011, the four vehicles noted above were transferred to the Bender Farm. The remaining items were stored in a semi-trailer and transported to the farm of Sharon Stahlhut (Ms. Stahlhut). Ms. Stahlhut is a widow who is related to COMEY through her deceased husband. Ms. Stahlhut maintained sole custody of the trailer since it arrived, believes all the contents are owned by DAVID COMEY, and told Your Affiant on August 5, 2013 and again on September 13, 2013, that nothing has been removed from the trailer since it arrived.

VI. CONCLUSION

29. There is probable cause to believe that DAVID COMEY (a) knowingly and willfully attempted to evade and defeat federal income taxes, in violation of Title 26, United States Code, 7201 (Attempted to Evade or Defeat Tax); (b) knowingly and willfully attempted to evade the reporting of a foreign bank account with an aggregate balance of over \$10,000 under his control, in violation of Title 31, United States Code, Section 5314 and that evidence of these violations can be found in documents currently stored in a 53 foot semi-trailer truck located in the southeast section of 8404 Pin Oak Road, Edwardsville, Illinois 62025.

FURTHER AFFIANT SAYETH NAUGHT.



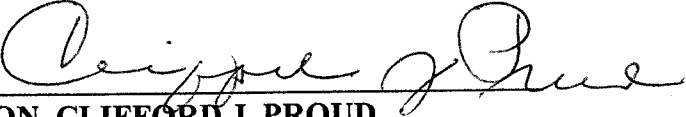
Robert A. Warren, Special Agent
Internal Revenue Service/Criminal Investigation

Stephen Wiggington
United States Attorney

NNORMAN R. SMITH
Assistant United States Attorney

State of Illinois)
) SS.
County of St. Clair)

Sworn to before me, and subscribed in my presence on the 16TH day of SEPTEMBER,
2013 at East St. Louis, Illinois.


HON. CLIFFORD J. PROUD
United States Magistrate Judge

ATTACHMENT A
DESCRIPTION OF PREMISE TO BE SEARCHED

1. A 53 foot, white semi-trailer (hereinafter "the Semi-Trailer"). The Semi-Trailer is pointing north/south and the doors are on the north side of the structure, located at the Southeast side of a farmhouse located at 8404 Pin Oak Road, Edwardsville, Illinois 62025 consisting of a working farm which consists of a farm house occupied by Ms. Sharon Stahlhut (the owner of the farm and residence), at least three barns or out buildings, at least one grain silo, and farm field of undetermined acreage.
2. The right side door on the Semi-Trailer bears the following markings:

"A-6008
"AIM
Transfer and Storage, Inc.
Oak Creek, WI"
3. The Semi-Trailer bears Illinois license plate number "301 958 ST".

ATTACHMENT B
THE ITEMS TO BE SEIZED

The items to be seized from the Semi-Trailer currently located at 2804 Pin Oak Road, Edwardsville, Illinois 62025 are described as follows:

- a. Copies of tax returns and forms TD F 90.22.1, Report of Foreign Bank and Financial Accounts (FBAR) for the years 2001 through the present.
- b. Copies of any instructions related to the filing of tax returns and/or FBAR's.
- c. Copies of any documents showing ownership in any income producing assets for the time period January 1, 2001 through the present.
- d. Bank statements, signature cards, deposit slips, and/or correspondence with any financial institution for the period January 1, 2001 through the present.
- e. Any notes, books, or other media demonstrating DAVID COMEY's knowledge of tax law and FBAR filing requirements.
- f. Balance sheets, income statements, and any other financial statements for the time period January 1, 2001 through the present.
- g. Any records or documents reflecting the receipt of income or assets, the expenditure, sale, transfer or investment of assets for the years 2001 through the present.